



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 18237489

Date: NOV. 04, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a nurse, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualifies for the underlying classification, the record did not demonstrate that the proposed endeavor has national importance or that the Petitioner is well positioned to advance it. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner submits a brief and reasserts her eligibility, arguing that the Director erred in the decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As we began reviewing of this record of proceeding, we observed that the individual who filed this appeal on behalf of the Petitioner did not appear to be an attorney licensed to practice law in any jurisdiction of the United States, as claimed. Though the agency sent that individual a letter requesting that he provide evidence of such licensure, he did not respond. As the record lacks evidence of his eligibility to practice law in the United States we cannot recognize him as Counsel, and we will not send him a copy of this decision. The Petitioner alone will receive the decision notice.

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The record contains evidence that the Petitioner earned a foreign four-year degree in nursing in 2008 and has at least five years of professional experience in the nursing and healthcare field. The remaining issue to be determined, therefore, is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The Petitioner’s proposed endeavor is to enrich U.S. healthcare and improve hospital environments by working as a nurse. In support, she provided a personal statement that detailed her work history and experience as a nurse in Brazil, numerous recommendation letters from former nursing colleagues in Brazil, and a copy of her Florida nursing license. The authors of the recommendation letters praised the Petitioner’s positive personal qualities and technical abilities as a nurse, as well as provided examples of the Petitioner’s leadership in various nursing roles. In particular, several authors highlighted the Petitioner’s experience in public health and obstetrics, as well as described the Petitioner’s ability to lead teams and provide quality patient care despite demanding and under-resourced workplace conditions.

The Director notified the Petitioner through a request for evidence (RFE) that although the field of nursing itself is nationally important, this alone is insufficient to establish the national importance of the Petitioner’s endeavor. Specifically, the Director noted that the Petitioner’s proposed endeavor would benefit her employer and patients but that the evidence did not establish that her employment

as a nurse would be nationally important. In her RFE response, the Petitioner clarified that her endeavor is to offer her expertise in order to help fill the gap of qualified nurses in the United States. She plans to accomplish this by continuing her job as a nurse at the [REDACTED] Hospital in Florida. Her endeavor would also include the longer-term plan of studying to obtain a master's degree in midwifery, applying for a doctoral degree program, and in five years, serving as the head of the Obstetrics Unit in the hospital where she works or at another healthcare facility. The Petitioner claimed that her endeavor impacts the United States because it will provide quality patient care, train other nurses on proper techniques and treatments, generate tax revenue, and improve public health. While we acknowledge these claims, the Petitioner has not offered sufficient evidence to substantiate them.

In denying the petition, the Director explained that although the Petitioner's endeavor has substantial merit, she had not established the national importance of it. Again, the Director noted that the endeavor stands to benefit the employing entity and the Petitioner's patients but that the evidence did not support a finding of national importance. Additionally, the Director noted that subsequent to her initial filing, the Petitioner shifted the focus of her endeavor by including plans to further her education. The Director explained that while furthering her education may eventually benefit the proposed endeavor, such educational pursuits do not contribute to a finding of national importance. We agree. As the following discussion illustrates, the Petitioner's evidence does not establish the national importance of her proposed endeavor.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. To illustrate, "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. While her endeavor has substantial merit, the record does not establish by a preponderance of the evidence that the Petitioner's patient work would impact the field of nursing or the U.S. healthcare industry more broadly, as opposed to being limited to the specific patients and workplace she serves. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

In order to illustrate the potential impact of her proposed endeavor, the Petitioner pointed to her success in the past. We reviewed her personal statement and the letters of recommendation written by colleagues in her current workplace in Florida. As with the letters initially submitted, the authors praise the Petitioner's abilities as a nurse and the personal attributes that make her an asset to their workplace and to the patients she serves. She also provided patient testimonials concerning the quality of care she provides them. While all the recommendation letters evidence the high regard the Petitioner's colleagues have for the Petitioner and her work, none of the letters offers persuasive detail concerning the Petitioner's proposed endeavor or how it would be nationally important. Even if the Petitioner replicates her nursing success in the United States through her proposed endeavor, her success would still be limited to the patients and employers she serves. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*. Furthermore, we note that the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.

The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work.

The Petitioner submitted an advisory opinion from [redacted] a professor at the [redacted] [redacted] concerning her eligibility for a national interest waiver. [redacted] stated that due to the national shortage of healthcare workers, a situation which the COVID-19 pandemic has exacerbated, the Petitioner's proposed endeavor is nationally important. Further, he claimed that in addition to offering her services on the frontlines of the pandemic, the Petitioner would train other professionals in the field to develop their skills and preparedness in the fight against COVID-19. He also noted that the Petitioner has the potential to and is qualified to teach and train others in her healthcare methods and strategies. Notably, the Petitioner has not explained how much of her time will be spent on teaching and training others and how much time she will devote to her clinical nursing activities. Furthermore, neither [redacted] nor the Petitioner has explained or identified what the Petitioner's methods and strategies are or how they differ from the methods and strategies already used in U.S. healthcare facilities.

We acknowledge both [redacted] and the Petitioner's claims that the COVID-19 pandemic and a pre-existing nursing shortage place the Petitioner's nursing work in high demand. We further acknowledge the Petitioner's arguments that healthcare is of vital importance for the nation's quality of life as well as an important aspect of the U.S. economy. Nevertheless, these arguments focus on the field of nursing and healthcare as a whole, not the Petitioner's specific proposed endeavor. Neither [redacted] nor the Petitioner offered sufficient evidence to address the shortcomings identified by the Director concerning the endeavor's benefit to the Petitioner's employer and patients but not the nation as a whole.

The Petitioner has not explained, for instance, how many patients she will treat or how treating those patients will have a broader impact on the healthcare field. The Petitioner has not suggested that her work will resolve the national nursing shortage, nor has she explained what specific impact her work would have on reducing such a shortage. To illustrate with another example, the Petitioner has not provided details of how her endeavor will generate tax revenue, an estimate of how much revenue it will generate, and whether such revenue would rise to a nationally important level. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Although the Petitioner claimed that her endeavor would fill a demand for nurses and generate tax revenue, she has not offered sufficient information or evidence regarding any projected impact on the national nursing shortage or U.S. taxes that would be attributable to her future work. Likewise, although the Petitioner points out the healthcare industry's importance to the economy, the Petitioner has not identified how her specific endeavor contributes to the economy. As such, she has not shown that the benefits to the regional or national economy resulting from her endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Dhanasar* 26 I&N Dec. at 890.

As previously mentioned, the Petitioner and [redacted] suggested that the Petitioner will impact the nursing field through teaching and training others. However, the Petitioner has not provided evidence to corroborate that her current or future nursing positions include teaching and training, how she will conduct these activities while also carrying out her clinical nursing work, and what methods or strategies she offers that are not already a part of the U.S. nursing system. Even if these details

were provided, the Petitioner would still need to explain how this work would have a broader impact beyond her specific workplace and patients. Here, the Petitioner improperly relies on the impact she makes on her individual workplace and patients as sufficient to meet the first Dhanasar prong.

On appeal, the Petitioner reemphasized that the field of healthcare is nationally important. However, as the Director explained, this alone is insufficient to establish the national importance of the Petitioner's endeavor. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Although we acknowledge the Petitioner's additional evidence on appeal, including another recommendation letter from a colleague and an additional evaluation of the Petitioner's education and experience, this evidence does not address the evidentiary shortcomings in the record concerning the national importance requirement of the first Dhanasar prong. Even considering a nursing shortage exacerbated by COVID-19, we conclude that the Petitioner's endeavor impacts the specific patients and workplaces she serves and that she has not persuasively established how her endeavor will have a broader impact.

Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.